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6 UNITED STATES DISTRICT COURT
7 EASTERN DISTRICT OF WASHINGTON
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9 MARK EDWARD MELLGREN,

10 Plaintiff,

11 v.
12

13 CAROLYN W. COLVIN,
14 Commissioner of Social Security,

15 Defendant.
16

No. 2:14-CV-00387-JTR

ORDER GRANTING
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT

17 **BEFORE THE COURT** are cross-motions for summary judgment. ECF
18 Nos. 12, 14. Attorney Lora Lee Stover represents Mark Edward Mellgren
19 (Plaintiff); Special Assistant United States Attorney Leisa A. Wolf represents the
20 Commissioner of Social Security (Defendant). The parties have consented to
21 proceed before a magistrate judge. ECF No. 16. After reviewing the
22 administrative record and briefs filed by the parties, the Court **GRANTS**
23 Defendant's Motion for Summary Judgment and **DENIES** Plaintiff's Motion for
24 Summary Judgment.

25 **JURISDICTION**

26 Plaintiff filed applications for Supplemental Security Income (SSI) and
27 Disability Insurance Benefits (DIB) on May 1, 2012, alleging disability beginning
28 September 7, 2011. Tr. 148-61. The applications were denied initially and upon

1 reconsideration. Tr. 85-91, 97-98. Administrative Law Judge (ALJ) Moira
2 Ausems held a hearing on February 7, 2014, Tr. 30-48, at which Plaintiff,
3 represented by counsel, testified as did vocational expert (VE) K. Diane Kramer.
4 The ALJ issued an unfavorable decision on May 9, 2014. Tr. 15-29. The Appeals
5 Council denied review. Tr. 1-7. The ALJ's May 2014 decision became the final
6 decision of the Commissioner, which is appealable to the district court pursuant to
7 42 U.S.C. § 405(g). Plaintiff filed this action for judicial review on December 4,
8 2014. ECF Nos. 1, 4.

9 **STATEMENT OF FACTS**

10 The facts of the case are set forth in the administrative hearing transcript, the
11 ALJ's decision, and the briefs of the parties. They are only briefly summarized
12 here.

13 Plaintiff was 56 years old at the time of the hearing. Tr. 49. Plaintiff
14 graduated from high school, Tr. 182, and previously worked as a galvanizer at a
15 foundry for seventeen years, Tr. 38, 45, and last worked as a general laborer
16 emptying and stocking grocery store freezers, Tr. 35-36. While working at the
17 foundry, Plaintiff had problems with "mucus and congestion," but did not seek
18 medical treatment. Tr. 37-38. Plaintiff stopped working at the foundry because he
19 was worried about health consequences from the job. Tr. 38. Plaintiff stopped
20 working as a general laborer because "it just wasn't anything that [could] really
21 support [him]" and he had problems coughing and breathing. Tr. 36.

22 Plaintiff testified that he has a hard time breathing, especially when the
23 weather is warmer or in hot environments. Tr. 41. Plaintiff also stated that he is
24 sensitive to stagnant/stale air and chemicals, including those used for cleaning. Tr.
25 42.

26 Plaintiff testified that he spends most of his time "[j]ust managing [his]
27 respiration." Tr. 42. Plaintiff testified that he can do minimal household chores,
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1 including taking care of his dogs, and doing laundry and going grocery shopping
2 about once a week. Tr. 43.

3 **STANDARD OF REVIEW**

4 The ALJ is responsible for determining credibility, resolving conflicts in
5 medical testimony, and resolving ambiguities. *Andrews v. Shalala*, 53 F.3d 1035,
6 1039 (9th Cir. 1995). The Court reviews the ALJ's determinations of law de novo,
7 deferring to a reasonable interpretation of the statutes. *McNatt v. Apfel*, 201 F.3d
8 1084, 1087 (9th Cir. 2000). The decision of the ALJ may be reversed only if it is
9 not supported by substantial evidence or if it is based on legal error. *Tackett v.*
10 *Apfel*, 180 F.3d 1094, 1097 (9th Cir. 1999). Substantial evidence is defined as
11 being more than a mere scintilla, but less than a preponderance. *Id.* at 1098. Put
12 another way, substantial evidence is such relevant evidence as a reasonable mind
13 might accept as adequate to support a conclusion. *Richardson v. Perales*, 402
14 U.S. 389, 401 (1971). If the evidence is susceptible to more than one rational
15 interpretation, the court may not substitute its judgment for that of the ALJ.
16 *Tackett*, 180 F.3d at 1097. Nevertheless, a decision supported by substantial
17 evidence will still be set aside if the proper legal standards were not applied in
18 weighing the evidence and making the decision. *Browner v. Secretary of Health*
19 *and Human Services*, 839 F.2d 432, 433 (9th Cir. 1988). If substantial evidence
20 supports the administrative findings, or if conflicting evidence supports a finding
21 of either disability or non-disability, the ALJ's determination is conclusive.
22 *Sprague v. Bowen*, 812 F.2d 1226, 1229-1230 (9th Cir. 1987).

23 **SEQUENTIAL EVALUATION PROCESS**

24 The Commissioner has established a five-step sequential evaluation process
25 for determining whether a person is disabled. 20 C.F.R. §§ 404.1520(a),
26 416.920(a); *see Bowen v. Yuckert*, 482 U.S. 137, 140-142 (1987). In steps one
27 through four, the burden of proof rests upon claimants to establish a prima facie
28 case of entitlement to disability benefits. *Tackett*, 180 F.3d at 1098-1099. This

1 burden is met once claimants establish that physical or mental impairments prevent
2 them from engaging in their previous occupations. 20 C.F.R. §§ 404.1520(a)(4),
3 416.920(a)(4). If claimants cannot do their past relevant work (PRW), the ALJ
4 proceeds to step five, and the burden shifts to the Commissioner to show that (1)
5 the claimants can make an adjustment to other work, and (2) specific jobs exist in
6 the national economy which claimants can perform. *Batson v. Comm’r of Soc.*
7 *Sec. Admin.*, 359 F.3d 1190, 1193-1194 (2004). If claimants cannot make an
8 adjustment to other work in the national economy, a finding of “disabled” is made.
9 20 C.F.R. §§ 404.1520(a)(i-v), 416.920(a)(4)(i-v).

10 ADMINISTRATIVE DECISION

11 On May 9, 2014, the ALJ issued a decision finding Plaintiff was not disabled
12 as defined in the Social Security Act. For purposes of Plaintiff’s DIB application,
13 the ALJ found Plaintiff met the insured status requirements of the Social Security
14 Act through December 31, 2011. Tr. 20.

15 At step one, the ALJ found Plaintiff had not engaged in substantial gainful
16 activity since September 7, 2011, the alleged onset date. Tr. 20.

17 At step two, the ALJ determined Plaintiff had the following severe
18 impairment: chronic obstructive pulmonary disease (COPD). Tr. 20.

19 At step three, the ALJ found Plaintiff did not have an impairment or
20 combination of impairments that met or medically equaled the severity of one of
21 the listed impairments. Tr. 21.

22 At step four, the ALJ assessed Plaintiff’s residual function capacity (RFC)
23 and determined he could perform a restricted range of medium work, but he must
24 avoid “concentrated exposure to pulmonary irritants/airborne pollutants such as
25 fumes, odors, dust, gases, poor ventilation, etc.” Tr. 21. The ALJ concluded that
26 Plaintiff was able to perform his PRW as a store laborer. Tr. 24. Thus, the ALJ
27 concluded Plaintiff was not under a disability within the meaning of the Social
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1 Security Act at any time from September 7, 2011 through the date of the ALJ's
2 decision. Tr. 25.

3 ISSUES

4 The question presented is whether substantial evidence supports the ALJ's
5 decision denying benefits and, if so, whether that decision is based on proper legal
6 standards. Plaintiff contends the ALJ erred by (1) not including all of Plaintiff's
7 limitations in the ALJ's RFC determination, (2) not posing a hypothetical question
8 to a VE to determine if Plaintiff was capable of doing his PRW, and (3) failing to
9 properly consider Plaintiff's testimony about the severity of his symptoms.

10 DISCUSSION

11 A. Credibility

12 Plaintiff contests the ALJ's adverse credibility determination. ECF No. 12
13 at 10-12.

14 It is generally the province of the ALJ to make credibility determinations,
15 *Andrews*, 53 F.3d at 1039, but the ALJ's findings must be supported by specific
16 cogent reasons, *Rashad v. Sullivan*, 903 F.2d 1229, 1231 (9th Cir. 1990). Absent
17 affirmative evidence of malingering, the ALJ's reasons for rejecting the claimant's
18 testimony must be "specific, clear and convincing." *Smolen v. Chater*, 80 F.3d
19 1273, 1281 (9th Cir. 1996). "General findings are insufficient: rather the ALJ
20 must identify what testimony is not credible and what evidence undermines the
21 claimant's complaints." *Lester v. Chater*, 81 F.3d 821, 834 (9th Cir. 1995).

22 The ALJ found Plaintiff credible to the "extent that he is unable to perform
23 activity that exceeds the [RFC] identified in this decision." Tr. 24. Regarding
24 Plaintiff's symptom reporting that exceeded the ALJ's RFC determination,
25 however, the ALJ found Plaintiff's reporting less than credible as it was contrary to
26 (1) the objective medical evidence, (2) the fact that Plaintiff's symptoms were
27 stable and controlled by medication, and (3) Plaintiff's activities of daily living
28 (ADL). Tr. 24.

1. Contrary to the objective medical evidence

The ALJ noted “several [medical] reports . . . reflect normal physical and mental status findings,” particularly the post-hearing consultative evaluations. Tr. 24. The ALJ noted Dr. Gunnar Holmquist’s refusal to complete disability paperwork for Plaintiff because Dr. Holmquist concluded that Plaintiff did not have significant or chronic lung disease. Tr. 24, 272.

Although it cannot serve as the sole ground for rejecting a claimant’s credibility, objective medical evidence is a “relevant factor in determining the severity of the claimant’s pain and its disabling effects.” *Rollins v. Massanari*, 261 F.3d 853, 857 (9th Cir. 2001).

The ALJ’s finding that objective evidence does not support Plaintiff’s symptom reporting is a clear and convincing reason to undermine Plaintiff’s credibility. Dr. Holmquist noted that Plaintiff’s “[h]istory and symptoms are in discordance with exam findings [relating to COPD].” Tr. 263; *see also id* (noting that Plaintiff sought treatment from Dr. Richard Byrd in 2000, at which time Dr. Byrd told Plaintiff that he was in normal respiratory health). In March 2014, Plaintiff underwent a spirometry. Tr. 341-44. Reviewing the results of this testing, Joseph Swiggum, M.D. observed that Plaintiff had some initial “component of obstruction that completely normalizes with bronchodilator response.” Tr. 345. Dr. Swiggum further observed “normal flow volume loop and normal diffusion capacity.” Tr. 345. Plaintiff argues that the record “demonstrates objective abnormalities which affects Plaintiff’s ability to breathe,” but cites to no evidence supporting this argument. ECF No. 12 at 11. Objective evidence does not support the severity of symptoms reported by Plaintiff; thus, this is a clear and convincing reason to discount Plaintiff’s credibility.

2. Symptoms stable and controlled with medication

The ALJ noted that several of Plaintiff’s treating sources found Plaintiff’s “pulmonary condition . . . stable and controlled by medication.” Tr. 24.

1 Generally, the fact that a condition can be remedied by medication is a
2 legitimate reason for discrediting an opinion. *Warre v. Comm'r of Soc. Sec.*
3 *Admin.*, 439 F.3d 1001, 1006 (9th Cir. 2006).

4 The ALJ's finding that Plaintiff's symptoms are stable and controlled with
5 medication is a specific, clear, and convincing reason to undermine Plaintiff's
6 credibility. Between May 2012 and August 2012, Plaintiff saw Gunnar Holmquist,
7 M.D. several times for management of his respiratory problems. Initially, Dr.
8 Holmquist observed that Plaintiff did "not appear ill," Tr. 253, but prescribed
9 Plaintiff QVAR and albuterol-ipatropium inhalers, Tr. 254. At the next
10 appointment, Dr. Holmquist told Plaintiff to stop using all his lung medications for
11 one month to determine whether the medications were helpful. Tr. 246. At a June
12 29, 2012 appointment, Dr. Holmquist emphasized that Plaintiff needed to take the
13 QVAR twice a day, every day. Tr. 263. By the end of July 2012, Dr. Holmquist
14 opined that Plaintiff "does not appear to have significant obstructive disease," but
15 rather, "[m]inor bronchospasm" that was "reversible with albuterol." Tr. 271. In
16 August 2012, Dr. Holmquist declined to fill out disability paperwork for Plaintiff
17 because he did not have significant medical problems and because his condition
18 "improved on daily QVAR." Tr. 272. Dr. Holmquist further observed that
19 Plaintiff "clearly has normal lung function by oximetries, both at rest and with
20 exercise." Tr. 273. In a June 2013 office visit with Edward Gruber, ARNP,
21 Plaintiff reported "some improvement while on [respiratory medication]." Tr. 298.
22 The record fully supports that Plaintiff's pulmonary impairment is stable and well
23 controlled with medication; thus, this is a clear and convincing reason to discount
24 Plaintiff's credibility.

25 **3. Activities of daily living (ADL)**

26 The ALJ noted that, at the hearing, Plaintiff alleged his ADL were
27 significantly restricted. Tr. 24; *see* Tr. 42-43. The ALJ found this reporting
28 contrary to Plaintiff's earlier reports of being able to do household chores and yard

1 work (although he worked slowly). Tr. 24 (citing Tr. 53). The ALJ also noted that
2 Plaintiff occasionally visits with friends, occasionally goes to car shows, concerts,
3 and out to eat. Tr. 24; *see* Tr. 191-92.

4 A claimant's daily activities may support an adverse credibility finding if (1)
5 the claimant's activities contradict his or her other testimony, or (2) "the claimant
6 is able to spend a substantial part of his day engaged in pursuits involving
7 performance of physical functions that are transferable to a work setting." *Orn v.*
8 *Astrue*, 495 F.3d 625, 639 (9th Cir. 2007) (citing *Fair v. Bowen*, 885 F.2d 597, 603
9 (9th Cir. 1989)). "The ALJ must make 'specific findings relating to [the daily]
10 activities' and their transferability to conclude that a claimant's daily activities
11 warrant an adverse credibility determination." *Id.* (quoting *Burch v. Barnhart*, 400
12 F.3d 676, 681 (9th Cir. 2005)). A claimant need not be "utterly incapacitated" to
13 be eligible for benefits. *Fair*, 885 F.2d at 603.

14 The ALJ's finding that Plaintiff's activities cast doubt on his alleged
15 limitations is a specific, clear, and convincing reason to undermine Plaintiff's
16 credibility. At the hearing, Plaintiff testified that he spent most of his time trying
17 to "manag[e] [his] respiration" and "surviv[e]." Tr. 42. When further questioned,
18 however, Plaintiff acknowledged that he spends time visiting with friends and
19 family, takes care of his dogs, and does household chores and grocery shopping.
20 Tr. 43. Plaintiff also reported to James Bailey, Ph.D. that he sometimes goes for
21 long walks and long car rides, watches television, and reads magazines and
22 newspapers. Tr. 325. Plaintiff's reported activities are inconsistent with his
23 testimony that he spends most of his time trying to manage his respiratory
24 problems; thus, this is a specific, clear, and convincing reason to undermine
25 Plaintiff's credibility.

26 **4. Conclusion**

27 In conclusion, the ALJ provided several specific, clear, and convincing
28 reasons to find Plaintiff less than credible in his symptom reporting. The ALJ's

1 adverse credibility finding is supported by substantial evidence and not based on
2 legal error.

3 **B. Step four**

4 Plaintiff argues that the ALJ should have included additional limitations in
5 the ALJ's RFC determination, including environmental limitations and limitations
6 associated with Plaintiff's depression. ECF No. 12 at 10. Plaintiff further argues
7 that the ALJ erred by not eliciting the opinions of a VE. *Id.* at 12.

8 A claimant's RFC is "the most [a claimant] can still do despite [his or her]
9 limitations." 20 C.F.R. § 416.945(a); *see also* 20 C.F.R. Part 404, Subpart P,
10 Appendix 2, § 200.00(c) (defining RFC as the "maximum degree to which the
11 individual retains the capacity for sustained performance of the physical-mental
12 requirements of jobs."). In formulating a RFC, the ALJ weighs medical and other
13 source opinions and also considers the claimant's credibility and ability to perform
14 daily activities. *See, e.g., Bray v. Comm'r, Soc. Sec. Admin.*, 554 F.3d 1219, 1226
15 (9th Cir. 2009).

16 In this case, the ALJ found Plaintiff maintained the RFC to perform a
17 restricted range of medium work, but he must avoid "concentrated exposure to
18 pulmonary irritants/airborne pollutants such as fumes, odors, dust, gases, poor
19 ventilation, etc." Tr. 21.

20 **1. Environmental limitations**

21 Plaintiff argues the ALJ should have included Dr. Arild Lein's opinion that
22 Plaintiff "can only be occasionally exposed to humidity, wetness, extreme heat and
23 extreme cold." ECF No. 12 at 10 (citing Tr. 350). Defendant argues that the
24 ALJ's RFC determination is consistent with Dr. Lein's opinions, and, even if the
25 ALJ did not adequately account for Dr. Lein's assessment of environmental
26 limitations, any error is harmless because the job of store laborer does not require
27 exposure to wetness, humidity, cold or heat. ECF No. 14 at 5-7.

1 Dr. Lien completed a consultative physical evaluation of Plaintiff in
2 February 2014 (after the administrative hearing). Tr. 328-36. Dr. Lien's only
3 diagnosis was "what appears to be possible mixed obstructive and restrictive lung
4 disease." Tr. 335. Dr. Lien thought the cause of Plaintiff's impairments was likely
5 past "industrial exposure." Tr. 335. Dr. Lien found Plaintiff had virtually no
6 physical limitations, except that he should have no more than occasional (defined
7 as 1/3 of a workday) exposure to humidity, wetness, dust, odors, fumes, pulmonary
8 irritants, extreme cold, and extreme heat. Tr. 350. The ALJ accounted for Dr.
9 Lien's assessment to the extent that Plaintiff must avoid dust, odors, fumes and
10 pulmonary irritants limitations. Tr. 21. But the ALJ's RFC determination did not
11 include limitations regarding humidity, wetness, and extreme temperatures.

12 The Court finds that the ALJ likely erred in omitting the humidity, wetness,
13 and extreme temperature limitations assessed by Dr. Lien, but any error was
14 harmless. "An error is harmless when "it is clear from the record that the . . . error
15 was inconsequential to the ultimate nondisability determination." *Tommasetti v.*
16 *Astrue*, 533 F.3d 1035, 1038 (9th Cir. 2008). The ALJ concluded that Plaintiff
17 could perform his PRW as a store laborer. Tr. 24. As noted by Defendant, the job
18 of store laborer (as defined by the Dictionary of Occupational Titles (DOT)) does
19 not generally involve exposure to humidity, wetness, or extreme temperatures. *See*
20 U.S. Dep't of Labor, *Dictionary of Occupational Titles* 922.687-058 available at
21 1991 WL 688132. Therefore, even if the ALJ had included all the limitations
22 assessed by Dr. Lien, Plaintiff's RFC would still allow him to perform his PRW.
23 Accordingly, any error "was inconsequential to the ultimate nondisability
24 determination" and harmless. *Tommasetti*, 533 F.3d at 1038.

25 **2. Limitations associated with mental impairments**

26 Plaintiff also argues "the ALJ did not take into consideration how Plaintiff's
27 depression would affect his ability to function in the workplace." ECF No. 14 at
28 10. The record contains various reports of Plaintiff alleging depression. *See, e.g.,*

Tr. 195, 312. The ALJ rejected Plaintiff's allegations reasoning that Plaintiff made only infrequent reports of depression to his treating sources, the medical record did not contain evidence of "any persistent mental status abnormality" or other clinical findings supporting a diagnosis of depression. Tr. 20-21. The ALJ also reasoned that Plaintiff had not alleged depression or anxiety in any of his Social Security applications or questionnaires and that James Bailey, Ph.D., in a post-hearing consultative psychiatric evaluation, determined that Plaintiff did not have a medically determinable psychological impairment. Tr. 21 (citing Tr. 323-27).

In formulating Plaintiff's RFC, the ALJ did not err by omitting any limitations associated with Plaintiff's alleged mental impairments. Dr. Bailey was not able to diagnose Plaintiff with any psychiatric disorders. Tr. 326. Dr. Bailey assessed Plaintiff with some mild cognitive and social limitations. Tr. 337-40. No other medical source in the record assessed Plaintiff with any nonexertional limitations. In short, there is no evidence that Plaintiff's alleged mental impairments cause more than mild nonexertional limitations.

3. Vocational expert testimony

Plaintiff argues that, after receiving the post-hearing physical and mental consultative evaluations, the ALJ should have held "a supplemental hearing in order to pose hypothetical questions to a [VE]." ECF No. 12 at 12. Plaintiff seems to argue that he cannot perform the job of store laborer because that work involved "extreme cold" as it required him "to clean and restock store freezers." *Id.* Defendant argues that Plaintiff's argument is moot because the ALJ found Plaintiff could perform his PRW as "generally performed, not actually performed." ECF No. 14 at 14.

Claimants have the burden of proving they can no longer perform PRW, 20 C.F.R. §§ 404.1512(a), 416.912(a), "either as actually performed or as generally performed," *Carmickle v. Comm'r, Soc. Sec. Admin.*, 533 F.3d 1155, 1166 (9th Cir. 2008) (quoting *Lewis v. Barnhart*, 281 F.3d 1081, 1083 (9th Cir. 2002)). A

1 claimant is typically the primary source for determining how a job is actually
2 performed. Social Security Ruling (SSR) 82-62. “[T]he best source for how a job
3 is generally performed is usually the [DOT].” *Pinto v. Massanari*, 249 F.3d 840,
4 846 (9th Cir. 2001).

5 An ALJ’s determination that a claimant can perform PRW need not be
6 supported by the testimony of a VE. *See* 20 C.F.R. § 404.1560(b)(2) (“[The
7 Commissioner] may use the services of [VEs] or vocational specialists . . . to
8 obtain evidence [it] need[s] to help [it] determine whether [claimants] can do
9 [their] past relevant work, given [their] [RFC].”) (emphasis added); *Crane v.*
10 *Shalala*, 76 F.3d 251, 255 (9th Cir. 1996) (holding that the ALJ’s determination
11 that the claimant could perform PRW made it unnecessary for the ALJ to call a VE
12 at step five); *Matthews v. Shalala*, 10 F.3d 678, 681 (9th Cir. 1993) (holding that
13 because the claimant “failed to show that he was unable to return to his previous
14 job . . . the burden of proof remained with [the claimant]” and “[t]he [VE’s]
15 testimony was thus useful, but not required”).

16 In this case, a VE testified at the administrative hearing, but the ALJ only
17 asked the VE about Plaintiff’s past work and whether Plaintiff had work skills that
18 would transfer to other work. Tr. 44-45. The ALJ did not pose any hypotheticals
19 to the VE as the ALJ wanted to review the post-hearing consultative evaluations.
20 In the ALJ’s decision, the ALJ relied on the DOT to conclude that Plaintiff was
21 able to perform his PRW as a store laborer as the job is “generally performed in the
22 economy.” Tr. 25.

23 The Court concluded *supra* that the ALJ did not err in finding Plaintiff less
24 than fully credible, in evaluating the medical evidence, or in formulating Plaintiff’s
25 RFC. Given that the ALJ’s decision through step four is supported by substantial
26 evidence and not based on legal error, and Plaintiff makes no showing that he
27 cannot do his PRW as generally performed, the ALJ was not required to solicit the
28 testimony of a VE. *See Matthews*, 10 F.3d at 681; *Crane*, 76 F.3d at 255. The

ALJ properly relied on the DOT to conclude that Plaintiff could perform his PRW. A comparison of Plaintiff's RFC to the demands required of a store laborer as listed in the DOT reveal that a person with Plaintiff's RFC should be able to work as a store laborer as the job is generally performed. *See* U.S. Dep't of Labor, *Dictionary of Occupational Titles* 922.687-058 available at 1991 WL 688132. Plaintiff has not met his burden to prove that he cannot perform his PRW. The ALJ's step four determination is supported by substantial evidence and not based on legal error.

CONCLUSION

Having reviewed the record and the ALJ's findings, the Court finds the ALJ's decision is supported by substantial evidence and free of legal error. Accordingly, **IT IS ORDERED:**

1. Defendant's Motion for Summary Judgment, **ECF No. 14**, is **GRANTED**.

2. Plaintiff's Motion for Summary Judgment, **ECF No. 12**, is **DENIED**.

The District Court Executive is directed to file this Order and provide a copy to counsel for Plaintiff and Defendant. **Judgment shall be entered for Defendant** and the file shall be **CLOSED**.

DATED August 24, 2015.



A handwritten signature in black ink, appearing to read "M", is written over a horizontal line.

JOHN T. RODGERS
UNITED STATES MAGISTRATE JUDGE